

No 232.

*Observed* on the other side; That, in the assignation, the word BREWER, making part of the designation of the assignee, was in the same hand with the rest of the deed; from which it was plain, that it was originally intended either for old Thomas Smith, or a person who was to be designed by his relation to him. But, on inspection, the LORDS did not agree in this, some of them thinking it to be rather in the same hand with the filling up; and it was observable, that they generally voted for Adhering or Altering, according to their apprehensions in this respect.

THE LORDS adhered.

Reporter, *Justice Clerk.* Act. *A. Macdougall.* Alt. *C. Binning & Haldane.* Clerk, *Gibson.*  
*Fol. Dic. v. 4. p. 125.* *D. Falconer, v. 1. No 137. p. 170.*

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DIVISION VIII.

Delivery when presumed made, and for whose Behoof.

No 233.

1626. December 16. BYRES *against* JOHNSTON.

A DISPOSITION having been delivered by the seller to a writer, in order to draw a charter in favour of the purchaser; this was not understood equivalent as if delivery had been made to the purchaser himself; and so there was still found *locus penitentiae*.

*Fol. Dic. v. 2. p. 156. Durie.*

\*.\* This case is No 15. p. 8405. *voce* LOCUS PENITENTIAE.

1628. February 21, L. MONIMUSK *against* L. PITTARO.

No 234.  
 A bond of provision in favour of children delivered to the mother's brother, was held to be a *depositum*, and not for behoof of the children.

IN an action of exhibition by the Laird of Monimusk against the Laird of Pittaro, for exhibition of certain bonds, and re-delivery of them to the pursuer, which were made by the pursuer in favour of his bairns for their provisions, and which were put by the father in the defender's hands, who was mother-brother to the bairns, to be kept by him to their uses; in respect of the which, the defender *alleged*, That the pursuer having so deposited them, they became the bairns' proper evidents, as effectual as if they had been delivered to themselves, being made for their provisions, which their father did; and their mother now being dead, the pursuer could not seek them back again; to be altered in their prejudice, or destroyed at the father's pleasure. Which allegiance the LORDS repelled; and found, that notwithstanding thereof, the